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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

Supreme Court, U.S.
FILED
APR 4 1980
MICHAEL RODAK, JR., CLERK

NO. 79-5946

ROBERT and LINDA PARKINS, Appellants,

V.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

NOTICE AND PROOF OF SERVICE

TO: Honorable William J. Scott
Attorney General of Illinois
188 W. Randolph Street
Chicago, Illinois 60601

Honorable Daniel Doyle
State's Attorney
Winnebago County Courthouse
Rockford, Illinois 61101

Phyllis J. Perko, Deputy Director
Illinois State's Attorneys
Appellate Service Commission
35 Fountain Square Plaza
Elgin, Illinois 60120

Robert & Linda Parkins
3305 Liberty Drive
Rockford, Illinois 61103

Jon Gary Noll
608 Ridgely Building
Springfield, Illinois 62701

You are hereby notified that on April 3, 1980, we mailed the original and one copy of the attached Brief Opposing Motion to Dismiss or Affirm in the above entitled cause to the Clerk of the above Court, copies of which are hereby served on you.

Mary Robinson, Deputy Defender

STATE OF ILLINOIS )
) SS
COUNTY OF KANE )

The undersigned being first duly sworn on oath deposes and says that she mailed the required number of copies of the Brief Opposing Motion to Dismiss or Affirm in the above entitled cause to the Clerk of the above Court, the Attorney General of Illinois and the State's Attorney of Winnebago County, by depositing them in the U.S. Mail in Elgin, postage prepaid, this 3rd day of April, 1980.

Mary Robinson, Deputy Defender

Subscribed and sworn to before me

this 3rd day of April, 1980.

Notary Public

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ON APPEAL FROM THE ILLINOIS SUPREME COURT

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

Mary Robinson, Deputy Defender
Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60120
(312) 695-8822

Counsel for Appellants

April 3, 1980

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The State of Illinois, in its Motion to Dismiss or Affirm, takes the position that the Illinois Supreme Court was correct in holding the Illinois telephone harassment statute, Ill.Rev.Stat., (Supp., 1979), Ch. 134, Sec. 16.4-1, constitutional in People v. Parkins, 77 Ill.2d 253, 396 N.E.2d 22 (1979), in part due to the State's inaccurate interpretation of Parkins as imposing a limiting construction upon the terms of the statute.

The Illinois Supreme Court did not expressly impose a limiting construction upon the terms of the telephone harassment statute [proscribing use of a telephone with the intent to "abuse, threaten or harass"]. As Justice Moran noted in his dissent to the Court's opinion in Parkins, the State had requested that the statute, failing to set forth objective standards by which to evaluate the conduct proscribed, be upheld by holding the statute applicable only to telephone calls made in an "unreasonable manner", thereby supplying the missing standard. Instead, the Court merely applied the maxim noscitur a sociis, that a word is known by the company

it keeps, to reason that the words "abuse" and "harass" in the statute take color from the word "threaten", and thus acquire a more restricted meaning. This interpretation by the Court hardly constitutes the imposition of a limiting construction since the Court failed to set forth any standard by which to evaluate the conduct proscribed. Indeed, the word "threaten" is not sufficiently narrow itself to avoid infringement on protected First Amendment rights, as evidenced by the statutory definition set forth by the State in footnote 5 on page 5 of its motion. Thus, the Court implicitly rejected the State's request for the imposition of a limiting construction.

By its argument, the State has ignored the widespread impact of the question presented here. As noted in the appellants' brief, legislation proscribing various forms of telephonic communication has been enacted in most states with widely divergent results. Recently, the Oregon Supreme Court held unconstitutionally vague the Oregon statute which defined "harassment" in part as "communicat[ing] with a person, anonymously or otherwise, by telephone, mail or other form of written communication, in a manner likely to cause annoyance or alarm..." . State v. Blair, 287 Or. 519, 601 P.2d 766 (1979). As the Court in Blair pointed out at page 768: "Messages that are likely to cause 'annoyance' or 'alarm' are almost limitless; we will not burden this opinion with hypothetical examples of letters from creditors, employers, angry parents, disappointed customers, jealous lovers, or followers of opposing athletic teams that could theoretically lead to filing a criminal complaint." Similarly, under the Illinois telephone harassment statute, criminal charges could theoretically be brought against creditors for threats made over the telephone, and in all the other situations listed by the Oregon Court. Thus, the question presented is substantial.



For these reasons, and the reasons set forth in the appellants' Jurisdictional Statement, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

Mary Robinson, Deputy Defender
Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60120
(312) 695-8822

Counsel for Appellants

April 3, 1980